

# EMPLOYMENT

## *Resources & Solutions*

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# Snell & Wilmer

## LAW OFFICES

## Ten Practical Tips for Terminating Employees

by Brian J. Mills, Partner, Snell & Wilmer

Often, employers are faced with the difficult task of terminating an employee. Sometimes, a good termination meeting can mean the difference between a clean break and years of expensive employment litigation. Here are some practical tips that may help to minimize the probability of such litigation:

### Tip #1: Create a Paper Trail

One of the most important things an employer can do is to make sure that its files contain the information supporting the reasons for termination. Unfortunately, employers often forget to document the performance and behavioral issues of their employees. It is therefore important to use the performance and disciplinary tools available to an employer including documented verbal warnings, write-ups, performance improvement plans, last chance agreements, suspensions and performance reviews. Employers should be especially careful with performance reviews. Supervisors often think they are doing the employee a favor by giving a good review to get them a better raise, but this is not a favor to the company. The problem comes when those reviews are later scrutinized by the employee's attorney who is questioning the rationale for the termination with a conflicting performance review. Also, if a warning is given, it should include language like "continued behavior will result in further discipline, up to and including, termination," so the employee cannot claim they were not on notice that they could be terminated for that behavior.

### Tip #2: Have a Reason for the Termination

Although California is an "at-will" employment state and most employee handbooks are filled with references to at-will employment, having a reason for the termination is always best. Juries are usually comprised of individuals who have had jobs and cannot or will not accept the concept of at-will employment. They want a reason and you should be able to explain that reason.

### Tip #3: Make the Termination Meeting Quick

The termination meeting should be quick – 10 to 15 minutes. An employer should make sure that the employee understands that they are being terminated, but should avoid getting into an argument with the departing employee. Although an employer can allow the employee to speak their mind, an employer should not to allow the situation to escalate into workplace violence or say anything that will later be used against them.

### Tip #4: Do Not Lie or Place Blame

Employers often believe that they need to soften the blow to an employee. Most commonly, an employer will tell their employee that they are being laid off instead of saying it was performance or behavior related. Although you may believe you are sparing your employee's feelings, it is difficult to explain later when you have already hired someone to replace them. Also, never place blame – do not say something like "I did not want to do this" or "Bob made me do it." Although it is sometimes difficult to be the bad guy, creating confusion or putting doubt into a departing employee's head can result in the employee going to an attorney looking for answers.

### Tip #5: Remember the Final Check

An employer must provide the final check to the employee on the day of termination. The final check should include any pay through the day of termination and any accrued but unused vacation, paid time off and floating holidays. If an employer fails to provide the final check, then under California Labor Code Section 203, an employee may be entitled to a day of wages for every day the final pay is late, up to 30 days.

### Tip #6: Provide All Required Notices

Under California Unemployment Code section 1089, an employer must

provide a terminated employee with a notice of the change in their employment and a copy of the information for unemployment benefits. Also, if there are other benefits forms (e.g. COBRA) that need to be provided, then employers should provide them or let the employee know that they will be mailed to them.

### Tip #7: Consider Severance

Severance is not required under the law and rarely required under company policy. Accordingly, a well-worded agreement that waives any legal claims against the company in exchange for the payment of severance can be a worthwhile defensive tool. An employer should however consult counsel when considering a severance agreement as there are specific legal issues that must be considered and certain legal requirements that must be complied with, especially if the employee is 40 years of age or older.

### Tip #8: Get the Company's Property Back

At the time of the termination, employers should request a return of all company property including any keys, parking passes, credit cards, uniforms, tools, computers, phones, tablets, or any other company property or equipment. Also, any company or client documents that have been provided should be returned. Importantly, if the employee has been using their personal cell phone, computer or tablet, then the IT department should either remotely wipe company information or be on-call for the termination so that company information can be removed from the employee's personal devices. Further, employers should turn off the employee's access to the company's computer system. If the employee claims they have pictures or personal emails or other information contained on their company computer, arrange a separate day for them to return and review the computer with an IT person or member of management to ensure that only personal information is returned.

### Tip #9: Provide a Confidentiality Reminder

If the employee has had access to confidential information or trade secrets, then the employer should provide the employee with a written reminder of their legal and any contractual obligations to protect and not disclose the company's proprietary information. If the employee previously signed a confidentiality agreement, then a copy should be provided at this meeting.

### Tip #10: Create a Checklist

One of the simplest things an employer can do to help make a termination go more smoothly is to create a checklist of what information and documents need to be provided to the employee. This helps the employer stay organized during the termination and makes sure that the employer complies with any legal obligations.

### Conclusion

Though terminating an employee is never pleasant, by following the tips above employers can reduce their risk of litigation.

#### Brian J. Mills

Brian Mills is a partner in the Orange County office of Snell & Wilmer whose practice is concentrated in employment litigation and counseling. He provides clients with ongoing advice on a wide range of personnel matters including hiring and termination decisions, employment agreements, wage and hour issues, public works compliance and employee medical leave. Reach Brian at [bmills@swlaw.com](mailto:bmills@swlaw.com) or 714.427.7484.



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# Major Changes Ahead for Piece-Rate Model Compensation Plans

by Michael Hood, Shareholder, Jackson Lewis

Recent court decisions and new legislation have limited the scope of piece-rate model compensation plans. While piece-rate plans long have been a popular method to pay employees, courts have begun to limit their effectiveness and correspondingly have increased employer liability. For example, in a class action by automobile technicians, the California Court of Appeals held that averaging piece-rate wages for time spent performing automotive repair tasks over the total hours worked during the pay period violated the California Labor Code. The Court held separate hourly compensation was required when technicians were performing non-repair tasks, such as cleaning their work station, participating in online training, or attending meetings.

In response, the California Legislature enacted AB 1513, which requires employers to compensate piece-rate workers separately for "non-productive time" (NPT), as well as for rest and recovery breaks. The new law (codified as Labor Code 226.2) takes effect on January 1, 2016. The new law's highlights include:



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- ▶ employees must be compensated separately for piece-rate work and for rest and recovery periods;
- ▶ rest and recovery periods must be paid at an hourly rate of no less than either the applicable minimum wage or the employee's average hourly wage for all time worked for the week; and
- ▶ piece-rate workers also must be compensated separately for NPT, which is defined as "time under the employer's control, exclusive of rest and recovery periods, that is not directly related to the activity being compensated on a piece-rate basis."



California employers need to be aware of these changes to limit liability and avoid costly class actions. To do so, employers should consider taking the following actions:

1. Employers who compensate non-exempt employees on a piece-rate or other non-hourly basis, such as commissions, should read and discuss the law with qualified counsel because of its many complexities, and its potential application to compensation arrangements, other than piece-rate structures.
2. Employers should confirm that their payroll practices and procedures will properly track and record time spent on piece-rate activities, NPT, and compensable rest and recovery time, and ensure that all time is clearly itemized on employees' paystubs.
3. If an employer is aware of any violation regarding NPT or rest and recovery periods, it may need to make immediate changes to its pay structure.

*Michael Hood is a Shareholder in the Orange County office of Jackson Lewis, an AmLaw 100 firm dedicated to representing management exclusively in workplace law. Please contact Michael at 949.885.1374 or Michael.Hood@jacksonlewis.com.*

## Better Health Benefits, Hassle-Free HR

As your business continues to grow and flourish, there will be a time when you can no longer manage the daily hassles of HR. Managing employee relations and paperwork can be a real hindrance on growth if you're allocating precious hours to those projects and not to acquiring quality clients and employees.

Unfortunately most internal human resources personnel are generalists and won't provide you the detail or understanding that you need. An HR Outsourcing firm is your best bet - here are two reasons why:



### 1 – Hassle-Free HR

A growing company needs support in both breadth and depth of human resources related issues. It won't be a matter of if, but *when*, a workplace conflict will occur that you cannot handle on your own. A dedicated HR manager from an outsourcing firm can provide that level of understanding because they're specialized and trained to handle a variety of workplace situations, including: hiring and firing employees, coworker conflict, and verifying that you're compliant with all recent federal and state workplace regulations.

### 2 – Benefits that Meet ACA Regulations

Employee attrition can be costly. Top performing employees may leave your company for another firm that provides benefits of higher perceived value. Employee retention is key to your company's success – as it can cost a lot of time and money to bring a new hire up to speed. Providing quality benefits may sound simple on the surface, but new regulations with the ever-changing Affordable Care Act (ACA) has made it much more costly. HR Outsourcing firms have access to large company policies that may reduce premiums with better networks than what your small business is able to provide.

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#### Mark Your Calendars!

Our **California Workplace Law Update** seminar takes place on December 8, 2015. For more information or to RSVP please email: [OCSVP@JacksonLewis.com](mailto:OCSVP@JacksonLewis.com) and mention code **OCBI**.



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# Is There Such a Thing as “Politically Correct” Speech in an Election Year Workplace?

by Tamara Devitt, Partner, Haynes and Boone LLP

As 2016 approaches, there is a lot of buzz about the presidential race. Although human resources experts say we should avoid talking politics in the workplace, it is inevitable that such discussions will occur. Employers should start to think about what they can and cannot do when it comes to restricting political expression in the workplace.

## California Protects Political Expression

California is one of the few states with a law that specifically addresses the issue of political expression in the employment context. Labor Code section 1101 prohibits an employer from having or enforcing any rule that (1) forbids or prevents employees from engaging or participating in politics or from becoming candidates for public office; or (2) controls or directs the political activities or affiliations of employees. Labor Code section 1102 prohibits an employer from threatening to discharge in an attempt to coerce or influence an employee to adopt or follow “any particular course or line of political action or political activity.” Courts have broadly defined “political activity.” For example, in *Gay Law Students Ass’n v. Pacific Tel. & Tel. Co.*, 24 Cal.3d 458 (1979), the California Supreme Court found that the homosexual community’s struggle for equal rights in employment was a protected political activity. By comparison, in *Lockheed Aircraft Corp. v. Super. Ct.*, 28 Cal.2d 481 (1946), the Court held that section 1101 **does not** prevent an employer engaged in producing vital war materials from discharging an employee who advocates for the overthrow of the government by force or whose loyalty to the United States has not been established to the employer’s satisfaction.

California law also prohibits employers from retaliating against an employee for engaging in lawful “off-duty” conduct that occurs during nonworking hours away from the employer’s premises, such as supporting a political candidate or voicing a view point inconsistent with the political views of the employer. Lab. Code § 96(k).

## Section 7 Protects Some Political Activities and Speech

Let’s not forget about federal law, either. Section 7 of the National Labor Relations Act, which grants employees the right to engage in “concerted activities for the purpose of collective bargaining or other mutual aid or protection,” has been interpreted to protect certain political speech and activities, and Section (8)(a)(1) provides that “it shall be an unfair labor practice to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in [Section 7].” In *Eastex, Inc. v. NLRB*, the United States Supreme Court found that the distribution of an employee newsletter, which encouraged employees to write to their legislators and register to vote so that employees could “defeat our enemies and elect our friends,” fell within Section 7’s “mutual aid or protection” language.

## What Does This All Mean for an Employer Seeking to Address Workplace Political Expression?

A private employer’s ability to regulate political expression likely depends on: (1) the nature of the communication or

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conduct (is it protected under applicable law); (2) the location of the expression (whether off-duty and/or away from the workplace) and (3) whether it has and consistently enforces its neutral rules regulating solicitation and expression in the workplace. A private employer may generally limit or prohibit political chit-chat at the water cooler (or today’s workplace social media equivalent) and require an employee to remove postings favoring a specific candidate from her workstation, but employers need to be careful to ensure the rule against such expression is even-handed, business-related and applied *uniformly*. **Bottom line:** Employers should review their policies and practices and make any necessary adjustments now in order to be prepared for the likely debate in the workplace next year.

For more information contact Tamara Devitt at 949.202.3060 or [tamara.devitt@haynesboone.com](mailto:tamara.devitt@haynesboone.com).

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## Personal Liability for Wage and Hour Violations Greatly Expanded Under California's Fair Day's Pay Act Effective January 1, 2016

Under California's new Fair Day's Pay Act (SB 588), not to be confused with California's Fair Pay Act addressing gender wage differentials, an aggrieved employee's wage theft claim may be brought against the employer, as well as any "other person acting on behalf of an employer," greatly expanding owner and executive personal liability for wage and hour violations in California.

The new law takes effect January 1, 2016, and extends to owners, directors, officers, and managing agents of the employer. These individuals may be personally liable for violations of any provision regulating minimum wages or hours and days of work under the Industrial Welfare Commission's Wage Orders.

Under the federal Fair Labor Standards Act (FLSA), employees can bring claims against officers and agents of the employer who can be held individually liable in certain situations. For example, an officer or agent who has an ownership interest in a corporate employer and operational control of the corporation's business and payroll practices may be deemed an "employer" under the FLSA, along with the corporation itself. In contrast, under California law individuals are generally not liable for violation of California's wage and hour laws ... until now.

Before the enactment of the Fair Day's Pay Act, California law did not impose personal liability on corporate officers or directors for wages owed by a corporate employer. The Industrial Welfare Commission's definition of "employer" did not extend to individual corporate agents acting within the scope of their agency. This all changes January 1 with the enactment of Labor Code section 558.1.

The stated legislative intent of the new law is to crack down on "wage theft," and in addition to creating individual liability, it gives the Labor Commissioner more enforcement rights against employers who do not pay employee wages. An employer engages in "wage theft" in a number of ways: requiring employees to work off the clock, failing to pay minimum wage, or making unlawful deductions from an employee's pay. Governor Brown's Wage Theft Prevention Law became effective January 1, 2012, and requires private employers in California to provide written notice to all non-exempt employees of certain employment information.

The Fair Day's Pay Act takes things a step further, empowering the California Labor Commissioner to use any of the existing remedies available to a judgment creditor and to act as a levying officer when enforcing a judgment. The Labor Commissioner may now issue the notice of levy, regardless of whether a court has issued a writ of execution. The Labor Commissioner may place a lien on an individual's or employer's property, levy its bank accounts and accounts receivable, and even prohibit the employer from continuing to conduct business in the state unless and until the employer posts a surety bond. If the employer continues to conduct business in violation of the bond requirement, the Labor Commissioner is empowered to issue a stop order prohibiting the use of employee labor until the employer complies. Continued failure to observe a stop order is a misdemeanor. Individuals or business entities that contract for services in the long-term care or property services industries will be jointly and severally liable for unpaid wages where the individuals and business entities are on notice.

The new law also prevents owners from closing a business and opening a new, similar business. Any new business that is "similar in operation and ownership" to the employer is liable for the wages owed. This "same employer" definition for liability purposes includes a situation where: (a) the employees of the successor employer are engaged in "substantially the same work in substantially the same working conditions under substantially the same supervisors," or (b) the new entity has, "substantially the same production process or operations, produces substantially the same products or offers substantially the same services, and has substantially the same body of customers."

What is the take away for employers and those acting on behalf of employers? Make certain that you are familiar with all federal, state, and local wage and hour laws that apply to your business, and act vigilantly to ensure that your business complies with those laws.



Colleen M. McCarthy, Esq. is a Partner and chairs the Firm's Employment Practices Group. She has dedicated her practice to representing and protecting employers, with a particular emphasis on risk mitigation through preventative counseling and sound practical advice.

For 15 years, Ms. McCarthy has counseled employers about the complicated employment laws that impact their businesses to ensure that they are in compliance, and to reduce the chance of costly litigation.

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# Checking Your Employees' Pulse – Forecasting Your Company's Lifeline

by Lisa Pierson, President, Kimco Staffing Services

Trying to build a shared vision? You may have verbal buy-in from your employees, but how will you know how they really feel? Just ask. But, you have to ask in the right way. You may find your company has underlying issues you never knew existed.

Anonymous employee satisfaction surveys provide the best option for soliciting real, honest feedback on your employee's satisfaction and will uncover opportunities for improvement. Possible survey topics include:

- ▶ Rewards and recognition
- ▶ Relationships with management
- ▶ Faith in the strategy and vision
- ▶ Depth of engagement with job duties

### Core Benefits

The responses you receive will help align management behavior with the needs of your employees. Your results can provide powerful guidance for training and development programs, and strategic planning.

Real numbers mean you can make real decisions. In the right hands, employee satisfaction surveys provide a powerful tool for understanding and guiding your workforce.

### Ask the Right Questions

No one knows your company's culture like your employees. Utilize their insight by leading a small, cross-functional task force to determine the topics to discuss and develop a list of questions. Test and re-test your survey to eliminate any leading or biased questions. If you want a reliable and valid survey, questions should clearly provide balanced options in order to avoid subconsciously influencing either a positive or a negative response.

### Motivate Participation

Optional surveys will only get responses from those who feel strongly on both sides of the spectrum. To eliminate the data gaps, make sure that all employees



participate. Use friendly but clear communication, or even small completion prizes to ensure all participate.

### Commit to Action

Now that employees know that you know how they feel, they will hold you responsible for positive

change. Failure to act on results can damage your reputation and even demoralize teams. Not working on problem areas could cause your survey to do more harm than good. You will earn their respect by showing that you are open to feedback.

### Communicate Trust

Publish a summary of results in a transparent manner. Celebrating successes and sharing weaknesses shows employees they can trust leadership. Fight survey skepticism. Let your employees see you act on the results.

### Plan Ahead

Take the time to plan and test your survey. If properly prepared, your survey can last you several years with minimal changes. This way, you can track trends and quantify progress. Annual surveys can become a valuable part of holding top management accountable in yearly performance reviews. So take your time and make sure that you have created a robust tool.

### Lisa Pierson

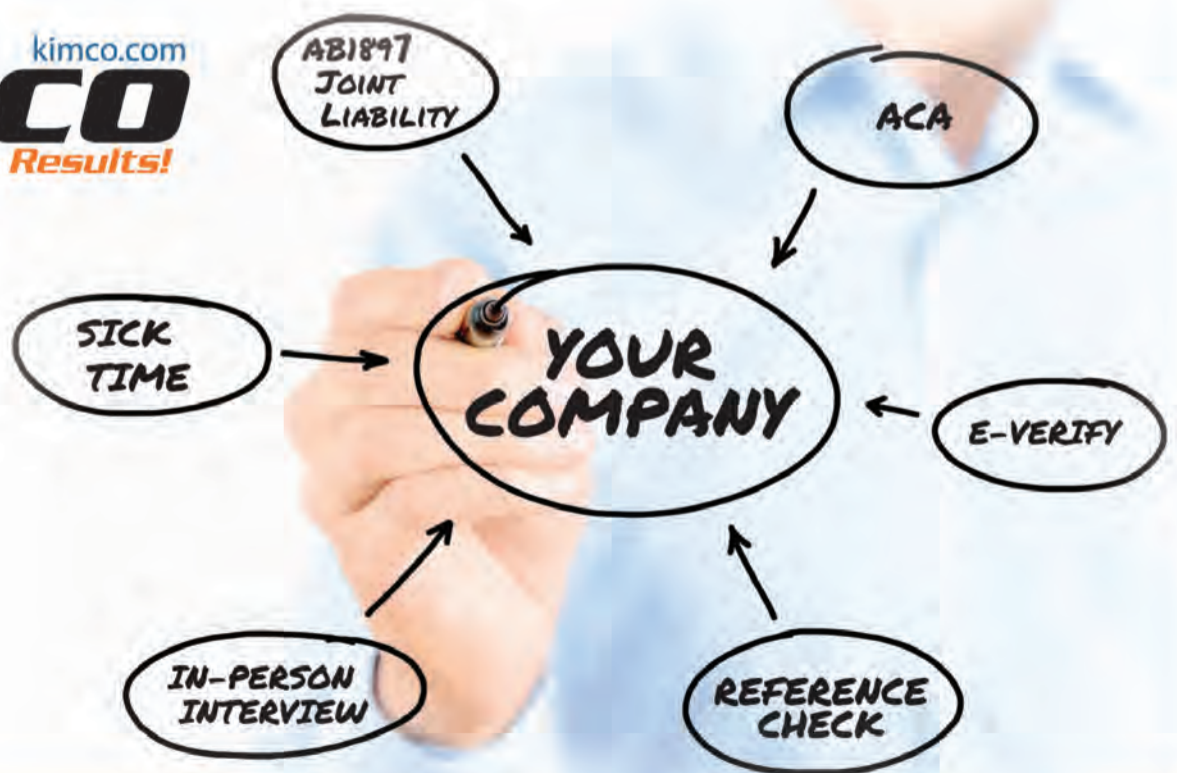
Lisa Pierson is the President of Kimco Staffing Services. Headquartered in Southern California since 1986, Kimco has the market expertise to help companies find top talent and the business acumen to help our clients navigate California's unique employment environment. Our approach to staffing focuses on individualized service, customized solutions, and a commitment to deliver "Hire Results"! You can reach Lisa at [lperson@kimco.com](mailto:lperson@kimco.com) or 949.331.1102.



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## Tips for Planning a Successful Company Gathering for the Holidays

Holiday gatherings are ideal for getting your employees together, showing appreciation for their hard work, and getting ready for the upcoming year. Planning a successful company gathering however, requires strategic planning! Let's look at some key components that will make your holiday gathering a success!



**Ann Nguyen**  
Assistant Branch Manager



**Kathleen Daly**  
Sr. Business Development Manager



**Claudia Perez**  
Sr. Vice President – Operations

aware that any violation of these policies may warrant disciplinary measures and even termination.

► **What can you do to better manage the risk of drinking and driving?**

Arranging alternative transportation, such as mandatory taxi service/party buses to and from the event, issuing a maximum of 2 drink tickets per employee, discontinuing alcoholic beverages service at least one hour before the event ends, and offering special rates on hotels within walking distance can all help address the risk.

► **Include a Greeting from the CEO.** Having a strong and positive message from the company's CEO will set the tone for the upcoming year.

► **Think outside the box.** Go beyond the traditional dinner or lunch. You may also need to be considerate of those who have limited mobility or other restrictions. Activities should have the ability to be modified to accommodate those with such requirements.

► **It's in the details.** The date, time and location of the event are important—but equally important are things like, if a significant other and/or children are invited to attend, the type of event, appropriate attire or "dress code", and the agenda for the event. Also, make sure your venue is prepared to accommodate guests with various mobility needs and/or food allergies.

► **Recognize your staff.** This can be done by presenting fun videos from the staff, managers acknowledging their key players, providing various awards, or even cash bonuses and gift cards. If your employees leave with a sense of pride and fulfillment—your event was truly a success!

► **Maintain a safe environment.** Should we serve alcohol at holiday company parties? This is a common question asked among employers and something not to be taken lightly. If serving alcohol, make sure to set expectations upfront. Sending out companywide notifications prior to the event date reminding employees of drug/alcohol policies as well as sexual harassment policies is crucial. Employees should be

► **Plan your party for a diverse workplace.** Steer away from emphasizing any one specific tradition or religious holiday. Place the focus on the year end celebration and good cheer for the New Year! Keep your décor nonspecific. Be sure to inform employees that attendance is voluntary.

► **Gift Exchanges and Secret Santa.** Gifts are typically exchanged in front of coworkers and managers. You may remind staff that, what is not offensive to one person, could be offensive to someone else. Avoid religious objects/symbols, personal hygiene products, overly expensive items, and anything that could be misinterpreted as offensive. Keeping gifts neutral is key. One way to manage this is to have a "wish list" posted where employees can choose to write down 1-2 items they would enjoy. Communicate your expectations in team meetings and via corporate communications to ensure that gifts are appropriate and in alignment with the company culture.

Through proper planning and communication you will foster a safe and fun event!

For more information, contact:

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# L-1A Visa: Alternative to the Stringent EB-5 Petition

by Richard M. Wilner, Partner, Wilner & O'Reilly, APLC

The EB-5 petition ("EB-5") has been routinely marketed as the "best option" for foreign entrepreneurs to obtain their permanent residency. In some cases it may actually be. In others, it's not and despite a more viable means of entering the United States, foreign investors want to buy a green card. After all, they attended an overseas seminar where they learned it only takes an investment of \$500,000 in a regional center and permanent residency in the United States is theirs. Sounds easy, right? Wrong. Foreign investors have started to learn that the EB-5 filing process is now fraught with delay, susceptible to fraud, and perhaps not the wisest use of their hard earned money. Consequently, qualified foreign business persons have begun to pursue L-1 visas as a quicker, more cost efficient and safer alternative to the EB-5.

## L-1A Visa

Though not as sexy as talk of million dollar investments, obtaining an L-1 visa is an attractive option for foreign nationals who 1) have established a business in their native country; 2) have worked there for one out of the past three years in a executive, managerial or specialized knowledge capacity; and 3) will work in a related U.S. entity in one of the three previously stated capacities.

## L-1A Is Not as Susceptible to Fraud

Generally speaking, L-1 visas are less susceptible to fraud by third parties, such as unlicensed agents who claim to be attorneys or overseas marketing personnel. In contrast, some EB-5 enterprises are run by third-parties who are not related to the foreign investors whatsoever. The U.S. Securities and Exchange Commission ("SEC") has ramped up its filing of complaints against individuals who misappropriated EB-5 funds. For example, on November 19, 2015, the SEC announced it has obtained a court order to freeze assets of Florida resident, Lin Zhong. She and her company raised about \$8.5 million from EB-5 investors and used about \$1 million of it to purchase a boat, a BMW, and for other personal items.

## You Don't Need \$500K

An L-1 does not require an investment of \$500,000 or \$1 million nor does not have a specific job creation requirement. Instead, U.S. officers review evidence to determine, among other things, whether the invested funds and number of proposed or actual U.S. employees support the full-time presence of an executive, manager or specialized knowledge transfer.

Another advantage of L-1 is that it may be approved as fast as fifteen days if premium processing was chosen. Foreign nationals may change status to L-1A



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while in the United States legally or obtain the nonimmigrant visa abroad through the U.S. Consulate. Their spouse and minor children may apply for an L-2 visa and the spouse may obtain a work permit. L-1A visa holders can swiftly apply for permanent residency in the United States.

EB-5 investors, especially those from China, are experiencing a significant delay in receiving permanent residency and may wait as long as 2 years to obtain immigration benefits through their investment. Moreover, some lawyers are appropriately resorting to the filing of federal writs of mandamus in order to ask the government to adjudicate the EB-5 applications.

## Conclusion

While the EB-5 program remains an appropriate strategy for some to immigrate to the United States, there are other ways to lawfully do so. And, there might be other ways to do so with a better spend and more efficient processing times. The L-1 visa is one of those ways.

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# Understanding the Unsaid

by Kathi Guiney SPHR, GPHR, SCP, President, YES! Your Human Resources Solution & Jocelyn Schamber, Creative Director, Fuzzy Red Pen

Have you ever wished you could read your boss's mind? OK, so these tips won't turn you into telepathic mutant Professor X, but they may make you a virtuoso of the nonverbal. We spend 80 percent of our days communicating, and 90 percent of that communication is silent. If we study the silence, we can catch what's *really* being said, from people's moods and mindsets, to their interests and understanding of the message—all of which can help us improve our business relations.



How to interpret nonverbal cues:

► **Body language.** Floppy or firm handshake? Steady or wandering eye contact? Be observant as every gesture and expression shares valuable data you won't get from words alone. Few will be as obvious as assuming the Superman pose: ready to take on challenges!

► **Appearances.** A pressed, clean outfit (Superman cape optional) conveys the desire to make a positive impression. Bedhead and mismatched socks convey less emphasis on first impressions and more of a "dog ate my alarm clock" morning.

► **Verbal-nonverbal disconnects.** The lips say, "I'd love to join the picnic committee!" but the crossed arms and set jaw tell the true story: "I will call in sick that day!"

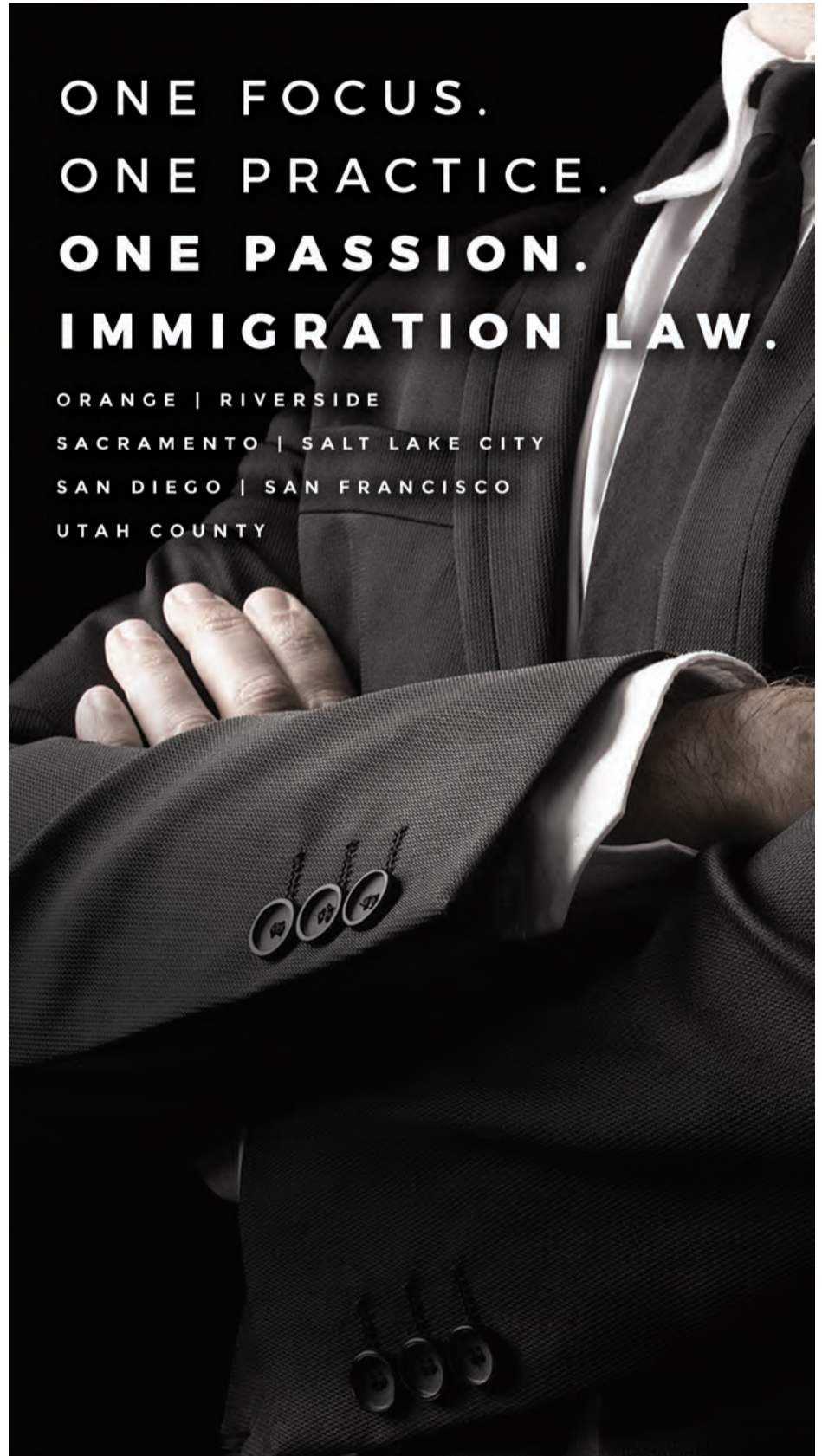
Use your newfound expertise to:

► **Steer meetings and conversations.** Glazed eyes, yawns, and playing Angry Birds are strong signals. Pay attention to these nonverbal cues to gauge the audience's interest, their reaction to your message, and whether someone else is waiting to speak.

► **Evaluate job candidates.** Observe how they wait in the lobby, how they shake your hand, how they engage with others while waiting. You may get a glimpse of how well candidates match your company's culture.

As a virtuoso of the nonverbal, you'll get the whole picture by keeping your eyes peeled. Most important, your improved understanding of others will make your business dealings more meaningful. And you don't have to be a telepathic X-Man to do it!

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